

Representative for the Association requested certain documents be subpoenaed and the District agreed to provide certain documents which had a bearing on the case without a subpoena, but wished to argue the relevance of the remaining documents, alleging that certain documents were not available and that job descriptions had changed over a period of years.

Hearing in this matter was held on September 13, 1988 at the office of the PELRB, 163 Manchester Street, Concord, New Hampshire.

Questions about the release of the President of the local organization to attend the hearing was resolved by PELRB at the start of the hearing.

It is PELRB's position that a resolution on the attendance of witnesses and their entitlement to pay for attendance and participation at the hearing was resolved to the mutual satisfaction of both parties. The Board also took under advisement Attorney Kaplan's request to quash certain requests for subpoenas.

The history behind the original certification and decertification of this unit is well known to PELRB. It was originally certified in 1976 and later decertified.

The Plant Services Director testified as to his past experience and current duties, organizational charts, involvement in the budgetary process and other responsibilities of supervisory nature. He also testified on the nature of his and other custodians' responsibilities for evaluating, training new employees, and scheduling. Depending on shifts and local situations, the Director stated that certain head custodians performed a substantial amount of custodial work, at least a minimum of 50 percent of their time, and that on certain shifts the head custodians worked alone.

Current head night supervisor at the Junior High School and former head custodian (currently employed as a regular custodian and President of the Association) testified on their involvement in evaluation, scheduling and attendance record keeping.

FINDINGS OF FACT

1. The Technical Service employees are employed in eleven schools; Concord H.S., Rundlett Jr. High, 9 elementary schools = Beaver Meadow, Broken Ground, Conant, Dame, Dewey, Eastman, Kimball, Rumford, Walker and the S.A.U. Administration Office.
2. The Plant Services Director is in charge of all custodial maintenance and transportation, including school buses for S.A.U. #8.
3. The duties actually performed by the head custodians, shift supervisors and the complex (High School) supervisor are consistent with those performed by all technical service employees.
4. In the majority of the schools, the head custodians work alone and therefore have no one under their direct supervision.

5. In those schools where more than one custodian is on duty, the head custodian or shift supervisor spends over 50 percent of his/her time performing the same duties and functions as other custodians.
6. Shift supervisors receive the same rate of pay and perform same work as other custodians.
7. A "supervisor" under RSA 273-A:8, II, is "a person(s) exercising supervisory authority involving the significant exercise of discretion", not someone merely performing routine of a clerical nature, paper power does not make a supervisor, nor do rare or infrequent supervisory acts change the status of an employee to a supervisor.
8. The Plant Services Director contends the head custodians, shift supervisors and the complex, or high school, supervisor has disciplinary authority and plays a key role in disciplining employees. We do not find that their authority rises to the level contemplated in the statute to constitute supervisory authority.
9. Association's Request for Findings:
 - #1 thru 14 Granted.
 - #15 N.H. PELRB does review NLRB cases and guidelines but decides N.H. cases on their own merits and do not adhere strictly to federal definitions.
 - #16 thru 24 Granted.
10. District's Request for Findings:
 - #1 thru 3 Granted.
 - #4 Granted, that it may be "desirable" but not a requirement.
 - #5 Granted in part however final authority vested with the Director.
 - #6 Denied.
 - #7 Granted.
 - #8 Granted, that it may be "desirable" but again not necessarily a requirement.
 - #9 Granted in part, degree of such supervision and effect of recommendations not significant enough to warrant exclusion.
 - #10 Denied.
 - #11 Granted.

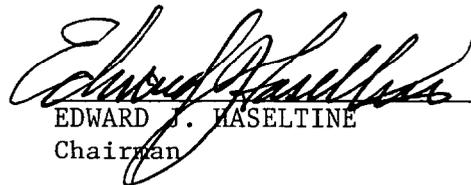
DECISION AND ORDER

After considering the written and oral evidence and based on the foregoing findings of fact and foregoing reasons, it is ORDERED:

- A) The head custodians, shift supervisors and complex (high school) supervisors within the meaning of 273-A and are thus included in the bargaining unit of all full and part-time technical service employees of S.A.U. #8.

- B) Election to determine whether the above employees desire to be represented for exclusive bargaining purposes by the Concord Association of Technical Service Employees/NEA-New Hampshire will be held by PELRB, under RSA 273-A:10 and Rules and Regulations, Pub 301.02 as expeditiously as possible.

Signed this 18th day of October, 1988.


EDWARD J. HASELTINE
Chairman

By unanimous vote. Chairman Edward J. Haseltine presiding. Members Richard E. Molan, Esq. and Richard W. Roulx present and voting. Also present, Executive Director, Evelyn C. LeBrun.